

Senate Bill No. 762

Passed the Senate September 10, 2015

Secretary of the Senate

Passed the Assembly September 8, 2015

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 10187.5 and 22161 of, and to add and repeal Article 3.7 (commencing with Section 20155) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 762, Wolk. Competitive bidding: best value: pilot program: design-build.

The Local Agency Public Construction Act requires counties, among others, to comply with specified procedures for contracting for public works projects, including the use of a competitive bidding process and awarding contracts to the lowest responsible bidder. Existing law provides that specified provisions of the act applicable to public works contracts awarded by counties, as specified, do not apply to certain contracts by the County of Napa and the County of San Diego.

This bill would establish a pilot program to allow the Counties of Alameda, Los Angeles, Riverside, San Bernardino, San Diego, Solano, and Yuba to select a bidder on the basis of best value, as defined, for construction projects in excess of \$1,000,000. The bill would establish procedures and criteria for the selection of a best value contractor. The bill would require that bidders verify specified information under oath, thereby imposing a state-mandated local program by creating a new crime. The bill would require the board of supervisors of a participating county, before January 1, 2020, to submit a report to specified legislative committees. The bill would repeal the pilot program provisions on January 1, 2020.

The bill would make legislative findings and declarations as to the necessity of a special statute for the Counties of Alameda, Los Angeles, Riverside, San Bernardino, San Diego, Solano, and Yuba.

Existing law, until January 1, 2025, authorizes the Department of General Services, the Department of Corrections and Rehabilitation, and certain local agencies to use the design-build procurement process for specified public works. Existing law defines “best value” for those purposes to mean a value determined

by evaluation of objective criteria that may include, but are not limited to, price, features, functions, life-cycle costs, experience, and past performance.

This bill would modify that definition to have the objective criteria evaluated, instead, relate to those specific criteria.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 10187.5 of the Public Contract Code is amended to read:

10187.5. For purposes of this article, the following definitions and the definitions in subdivision (a) of Section 13332.19 of the Government Code shall apply:

(a) “Best value” means a value determined by evaluation of objective criteria that relate to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of the department and meeting the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring agency, or a tradeoff between price and other specified factors.

(b) “Construction subcontract” means each subcontract awarded by the design-build entity to a subcontractor that will perform work or labor or render service to the design-build entity in or about the construction of the work or improvement, or a subcontractor licensed by the State of California that, under subcontract to the design-build entity, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications produced by the design-build team.

(c) “Department” means the Department of General Services and the Department of Corrections and Rehabilitation.

(d) “Design-build” means a project delivery process in which both the design and construction of a project are procured from a single entity.

(e) “Design-build entity” means a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(f) “Design-build team” means the design-build entity itself and the individuals and other entities identified by the design-build entity as members of its team. Members shall include the general contractor and, if utilized in the design of the project, all electrical, mechanical, and plumbing contractors.

(g) “Director” means, with respect to procurements undertaken by the Department of General Services, the Director of General Services or, with respect to procurements undertaken by the Department of Corrections and Rehabilitation, the secretary of that department.

SEC. 2. Article 3.7 (commencing with Section 20155) is added to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, to read:

Article 3.7. Best Value Construction Contracting for Counties
Pilot Program

20155. (a) This article provides for a pilot program for the Counties of Alameda, Los Angeles, Riverside, San Bernardino, San Diego, Solano, and Yuba for construction projects in excess of one million dollars (\$1,000,000).

(b) The board of supervisors of a county shall let any contract for a construction project pursuant to this article to the bidder representing the best value or else reject all bids.

(c) The bidder may be selected on the basis of the best value to the county. In order to implement this method of selection, the board of supervisors shall adopt and publish procedures and required criteria that ensure that all selections are conducted in a fair and impartial manner. These procedures shall conform to Sections 20155.3 to 20155.6, inclusive, and shall be mandatory for a county that chooses to participate in the pilot program.

(d) If the board of supervisors of a county deems it to be in the best interest of the county, the board of supervisors, on the refusal or failure of the successful bidder for a project to execute a tendered contract, may award it to the bidder with the second lowest best

value score, as determined in accordance with subdivision (c) of Section 20155.5. If the second bidder fails or refuses to execute the contract, the board of supervisors may likewise award it to the bidder with the third lowest best value score, as determined in accordance with subdivision (c) of Section 20155.5.

20155.1. As used in this article:

(a) “Best value” means a procurement process whereby the selected bidder may be selected on the basis of objective criteria for evaluating the qualifications of bidders with the resulting selection representing the best combination of price and qualifications.

(b) “Best value contract” means a competitively bid contract entered into pursuant to this article.

(c) “Best value contractor” means a properly licensed person, firm, or corporation that submits a bid for, or is awarded, a best value contract.

(d) “County” means any of the following counties:

- (1) The County of Alameda.
- (2) The County of Los Angeles.
- (3) The County of Riverside.
- (4) The County of San Bernardino.
- (5) The County of San Diego.
- (6) The County of Solano.
- (7) The County of Yuba.

(e) “Demonstrated management competency” means the experience, competency, capability, and capacity of the proposed management staffing to complete projects of similar size, scope, or complexity.

(f) “Financial condition” means the financial resources needed to perform the contract. The criteria used to evaluate a bidder’s financial condition shall include, at a minimum, capacity to obtain all required payment bonds, performance bonds, and liability insurance.

(g) “Labor compliance” means the ability to comply with, and past performance with, contract and statutory requirements for the payment of wages and qualifications of the workforce. The criteria used to evaluate a bidder’s labor compliance shall include, as a minimum, the bidder’s ability to comply with the apprenticeship requirements of the California Apprenticeship Council and the Department of Industrial Relations, its past conformance with

those requirements, and its past conformance with requirements to pay prevailing wages on public works projects.

(h) “Qualifications” means the financial condition, relevant experience, demonstrated management competency, labor compliance, and safety record of the bidder, and, if required by the bidding documents, some or all of the preceding qualifications as they pertain to subcontractors proposed to be used by the bidder for designated portions of the work. A county shall evaluate financial condition, relevant experience, demonstrated management competency, labor compliance, and safety record, using, to the extent possible, quantifiable measurements.

(i) “Relevant experience” means the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity.

(j) “Safety record” means the prior history concerning the safe performance of construction contracts. The criteria used to evaluate a bidder’s safety record shall include, at a minimum, its experience modification rate for the most recent three-year period, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period.

20155.2. As used in this article:

(a) “Apprenticeable occupation” means an occupation for which the Chief of the Division of Apprenticeship Standards had approved an apprenticeship program pursuant to Section 3075 of the Labor Code prior to January 1, 2014.

(b) “Skilled and trained workforce” means a workforce that meets all of the following conditions:

(1) All the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards.

(2) (A) As of January 1, 2016, at least 20 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the United States Secretary of Labor.

(B) As of January 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the United States Secretary of Labor.

(C) As of January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the United States Secretary of Labor.

(D) As of January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the United States Secretary of Labor.

(E) As of January 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the United States Secretary of Labor.

(F) For an apprenticeable occupation in which no apprenticeship program had been approved by the Chief of the Division of Apprenticeship Standards prior to January 1, 1995, up to one-half of the graduation percentage requirements of subparagraphs (A)

to (E), inclusive, may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation prior to the chief's approval of an apprenticeship program for that occupation in the county in which the project is located.

(c) "Skilled journeyperson" means a worker who either:

(1) Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief of the Division of Apprenticeship Standards or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the United States Secretary of Labor.

(2) Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the Chief of the Division of Apprenticeship Standards.

20155.3. A county shall proceed in accordance with the following when awarding best value contracts under this article:

(a) The county shall not select a bidder on the basis of the best value to a county unless, after evaluating at a public meeting the alternative of awarding the contract on the basis of the lowest bid price, the county makes a written finding that awarding the contract on the basis of best value, for the specific project under consideration, will accomplish one or more of the following objectives: reducing project costs, expediting the completion of the project, or providing features not achievable through awarding the contract on the basis of the lowest bid price.

(b) The county shall prepare a solicitation for bids and give notice pursuant to Section 20125. A county may identify specific types of subcontractors that are required to be included in the bids. A county shall comply with Chapter 4 (commencing with Section 4100) of Part 1 with regard to construction subcontractors identified in the bid.

(c) The county shall establish a procedure to prequalify bidders pursuant to Section 20101. The information required pursuant to this section shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. Information submitted by the bidder as part of the evaluation process shall not be open to public inspection to the extent that information is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(d) Each solicitation for bids shall do all of the following:

(1) Invite prequalified bidders to submit sealed bids in the manner prescribed by this article.

(2) Include a section identifying and describing the following:

(A) Criteria that the county will consider in evaluating bids.

(B) The methodology and rating or weighting system that will be used by the county in evaluating bids.

(C) The relative importance or weight assigned to the criteria identified in the request for bids.

(e) Final evaluation of the best value contractor shall be done in a manner that prevents cost or price information from being revealed to the committee evaluating the qualifications of the bidders prior to completion and announcement of that committee's decision.

20155.4. (a) A best value contractor shall not be prequalified or shortlisted unless the contractor provides an enforceable commitment to the county that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

(b) A contractor's commitment that a skilled and trained workforce will be used to perform the project or contract may be established by any of the following:

(1) The contractor's agreement with the county that the contractor and its subcontractors at every tier will comply with the requirements of this section and that the contractor will provide the county with evidence, on a monthly basis while the project or contract is being performed, that the contractor and its subcontractors are complying with the requirements of this section.

(2) If the county has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract, and that includes the requirements of this section, the contractor's agreement that it will become a party to that project labor agreement.

(3) Evidence that the contractor has entered into a project labor agreement that includes the requirements of this section and that will bind the contractor and all its subcontractors at every tier performing the project or contract.

20155.5. Selection of the best value contractor shall be made as follows:

(a) (1) An evaluation committee appointed by the county shall evaluate the qualifications of the bidders based solely upon the criteria set forth in the solicitation documents, and shall assign a qualifications score to each bid.

(2) A county shall establish written policies and procedures, consistent with applicable law, to ensure that members of an evaluation committee are free from conflicts of interest, if the county has not already established applicable written policies and procedures.

(b) A county shall not award a contract for a construction project pursuant to this article if a solicitation for bids for that construction project results in the submission of fewer than three responsive bids to the county for evaluation.

(c) Except as provided in subdivision (d) of Section 20155, the award of the contract shall be made to the bidder whose bid is determined by a county, in writing, to be the best value to the county. To determine the best value contractor, the county shall divide each bidder's price by its qualifications score. The lowest resulting cost per quality point will represent the best value bid.

(d) A county shall issue a written decision of its contract award.

(e) Upon issuance of a contract award, a county shall publicly announce its award identifying the best value contractor to which the award is made, the project, the project price, and the selected best value contractor's score based on the evaluation criteria listed in the request for bids. The notice of award shall be made public and include the score of the selected best value contractor in relation to all other responsive bidders and their respective prices. The contract file shall include documentation sufficient to support the decision to award.

20155.6. (a) If a county elects to award a project pursuant to this article, retention proceeds withheld by the county from the selected best value contractor shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(b) In a contract between the selected best value contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the county and the selected best value contractor. If the selected best value contractor provides written notice to a

subcontractor that, prior to or at the time the bid is requested, a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the selected best value contractor, then the selected best value contractor may withhold retention proceeds in excess of the percentage specified in the contract between the county and the selected best value contractor from any payment made by the selected best value contractor to the subcontractor.

20155.7. (a) Before January 1, 2020, the board of supervisors of a participating county shall submit a report to the appropriate policy committees of the Legislature and the Joint Legislative Budget Committee. The report shall include, but is not limited to, the following information:

- (1) A description of the projects awarded using the best value procedures.
- (2) The contract award amounts.
- (3) The best value contractors awarded the projects.
- (4) A description of any written protests concerning any aspect of the solicitation, bid, or award of the best value contracts, including the resolution of the protests.
- (5) A description of the prequalification process.
- (6) The criteria used to evaluate the bids, including the weighting of the criteria and an assessment of the effectiveness of the methodology.
- (7) If a project awarded under this article has been completed, an assessment of the project performance, to include a summary of any delays or cost increases.

(b) A report submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

20155.8. Except as otherwise provided in this article, this article is not intended to change in any manner any guideline, criteria, procedure, or requirement of a county to let any contract for a project to the lowest responsible bidder or else reject all bids.

20155.9. This article shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 3. Section 22161 of the Public Contract Code is amended to read:

22161. For purposes of this chapter, the following definitions apply:

(a) “Best value” means a value determined by evaluation of objective criteria that relate to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of the local agency and meeting the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring agency, or a tradeoff between price and other specified factors.

(b) “Construction subcontract” means each subcontract awarded by the design-build entity to a subcontractor that will perform work or labor or render service to the design-build entity in or about the construction of the work or improvement, or a subcontractor licensed by the State of California that, under subcontract to the design-build entity, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications produced by the design-build team.

(c) “Design-build” means a project delivery process in which both the design and construction of a project are procured from a single entity.

(d) “Design-build entity” means a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(e) “Design-build team” means the design-build entity itself and the individuals and other entities identified by the design-build entity as members of its team. Members shall include the general contractor and, if utilized in the design of the project, all electrical, mechanical, and plumbing contractors.

(f) “Local agency” means the following:

- (1) A city, county, or city and county.
- (2) A special district that operates wastewater facilities, solid waste management facilities, water recycling facilities, or fire protection facilities.

- (3) Any transit district, included transit district, municipal operator, included municipal operator, any consolidated agency, as described in Section 132353.1 of the Public Utilities Code, any joint powers authority formed to provide transit service, any county transportation commission created pursuant to Section 130050 of

the Public Utilities Code, or any other local or regional agency, responsible for the construction of transit projects.

(g) (1) For a local agency defined in paragraph (1) of subdivision (f), “project” means the construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure. For a local agency defined in paragraph (1) of subdivision (f) that operates wastewater facilities, solid waste management facilities, or water recycling facilities, “project” also means the construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, or regional and local water recycling facilities.

(2) For a local agency defined in paragraph (2) of subdivision (f), “project” means the construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, regional and local water recycling facilities, or fire protection facilities.

(3) For a local agency defined in paragraph (3) of subdivision (f), “project” means a transit capital project that begins a project solicitation on or after January 1, 2015. A “project,” as defined by this paragraph, that begins the solicitation process before January 1, 2015, is subject to Article 6.8 (commencing with Section 20209.5) of Chapter 1. “Project,” as defined by this paragraph, does not include state highway construction or local street and road projects.

SEC. 4. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the need to establish a pilot project for the Counties of Alameda, Los Angeles, Riverside, San Bernardino, San Diego, Solano, and Yuba to determine the potential benefits and consequences of using best value procurement to facilitate infrastructure improvements and ease fiscal impacts.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2015

Governor